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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

ROBERT COLLINS,

Plaintiff and Appellant,

v.

STEVE LEBARD,

Defendant and Respondent.

2d Civil No. B190448
(Super. Ct. No. 1195029)
(Santa Barbara County)

Appellant Robert Collins appeals from judgment of dismissal entered after the trial court sustained a demurrer to his first amended complaint for libel without leave to amend. Because Collins has not presented a sufficient record to demonstrate error, we affirm.

FACTUAL AND PROCEDURAL HISTORY

Our knowledge of the facts is limited to the information in the settled statement. Collins has not included the first amended complaint in the record, nor any other pleadings. From the settled statement we infer that Collins' claim for libel was based on a letter written by LeBard in which LeBard characterized Collins' phone calls as "threatening."

The trial court sustained a demurrer to the initial complaint with leave to amend. Collins filed a first amended complaint, and LeBard filed a demurrer. The trial

court continued the hearing on the demurrer in order to consider Collins' late-filed opposition.

The settled statement provides that at the hearing the trial court, "sustained the demurrer without leave to amend. It held that the characterization of plaintiff's phone calls in the letter as 'threatening' was a statement of opinion that did not support a cause of action for libel, and that even if libelous the statement was not libel per se and would require that special damages be alleged."

DISCUSSION

On appeal from a judgment of dismissal entered after a demurrer has been sustained without leave to amend, we accept the factual allegations of the complaint as true and review the complaint de novo to determine whether the facts as pleaded state a cause of action. (*Medina v. Hillshore Partners* (1995) 40 Cal.App.4th 477, 481.) The judgment of the trial court is presumed to be correct. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) "All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown." (*Id.* at p. 564.)

Appellant has not affirmatively shown any error. He has not included in the record the underlying pleading, the attack on the pleading by demurrer, or any opposition or reply briefs. He has not overcome the presumption that the judgment is correct.

The judgment is affirmed. Costs are awarded to respondent.

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COFFEE, J.

We concur:

YEGAN, Acting P.J.

PERREN, J.

Zel Canter, Judge

Superior Court County of Santa Barbara

Robert Collins, in pro. per., for Plaintiff and Appellant

Law Offices of Linda M. Libertucci, for Defendant and Respondent.